

**Exhibit "F"**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND : CIVIL TERM

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MCCORMICK 105, LLC,

Plaintiff,

-against-

JAMES P. AVARAS, MCCORMICK 105, LLC,  
"JOHN DOE 1-5" and "JANE DOE 1-5", these  
names being fictitious and unknown to  
plaintiff, the persons or parties intended  
being the tenants, occupants, persons or  
corporations, if any, having or claiming  
an interest in or lien upon the premises  
described in the Complaint,

Defendants.

----- X  
Rockland County Courthouse  
One South Main Street  
New City, New York  
November 21, 2022

BEFORE: HONORABLE ROLF M. THORSEN,  
Acting Supreme Court Justice

APPEARANCES:

LAW OFFICES OF JEFFREY S. GREENE, P.C.  
Attorneys for the Plaintiff  
800 Westchester Avenue, N307  
Rye Brook, New York 10573  
BY: JEFFREY S. GREENE, ESQ.

ZERILLI & ASSOCIATES, P.C.  
Attorneys for the Defendants  
20 South Main Street, Suite 5  
New City, New York 10956  
BY: JOSEPH M. BECKER, ESQ.

ALSO PRESENT:  
CONNIE AVARAS

Index No.:  
036145/2017

**Order to  
Show Cause**

IRENE F. MONFREDO  
SENIOR COURT REPORTER

1 THE COURT CLERK: Number 15 on today's calendar in  
2 the matter of McCormick 105, LLC against James Avaras.  
3 Plaintiff to my left, please, and your appearance for the  
4 record, counsel.

5 MR. GREENE: Good afternoon, Your Honor, Jeff  
6 Greene on behalf of the plaintiff, McCormick 105, LLC.

7 THE COURT: Good afternoon, Mr. Greene.

8 MR. BECKER: Good morning, Your Honor, Joseph  
9 Becker on behalf of the defendant, James Avaras. I also  
10 have in the courtroom with me Mr. Avaras' wife, Connie  
11 Avaras, as well as his son. Unfortunately due to  
12 Mr. Avaras' health, he was unable to be here.

13 THE COURT: Good afternoon to you all.

14 So we're here this afternoon pursuant to an Order  
15 to Show Cause which Mr. Becker has filed on behalf of the  
16 defendants seeking a stay of the foreclosure sale which is  
17 scheduled from an hour from now.

18 Talk to me, Mr. Becker.

19 MR. BECKER: As stated in my papers, Mr. Avaras is  
20 suffering from severe brain cancer. He recently underwent  
21 emergency brain surgery. He's had multiple surgeries. In  
22 fact, since I believe this past weekend, he was in the  
23 hospital again. In short, for him to lose his home at this  
24 time would be an extreme hardship.

25 As the Court is, I'm sure, well aware, foreclosure

actions are equitable in nature. And when equity is involved, it is as broad as equity as justice would require. Now, in many other situations where people may lose their home, equity can intervene to prevent that loss, whether that be evictions or another method that sometimes causes people to lose their homes would be a partition action. In both of those actions, equity can intervene to prevent the loss of a home when it results in extreme hardship. Here, the loss of Mr. Avaras' home would put his health at tremendous risk because of his current medical condition. As such, it is the defendant's belief that equity should again intervene much like it can in other forms, in other cases, to stay the sale and allow Mr. Avaras to retain his home during his current medical situation.

In addition, the Avarases are attempting to work towards a modification and this would buy them time -- give them time to do that. But, whether that modification is ultimately successful or not, the fact remains that the loss of the Avaras' home at this point would be an extreme hardship and unusual hardship. It is not a matter of the ordinary hardship which is severe with the loss of a home, but this goes above and beyond that. Ordinarily when someone loses their home, they lose their home and it's a devastating loss. Here, it risks the life, immediately the life of Mr. Avaras.

1 THE COURT: So obviously the Court is sympathetic  
2 towards Mr. Avaras and his family, as well. Mr. Becker, as  
3 you are constrained to do based upon the medical information  
4 provided to the Court makes reference to his current medical  
5 condition, which is obviously very serious, but I don't have  
6 any indication as to, you know, how long this stay might be  
7 necessary, whether it's a day, a week, a month, a year, two  
8 years. I don't have really any information as to his  
9 prognosis, if you will, other than that, yes, if he is  
10 forced to move at this point in time it would, you know,  
11 potentially have a devastating effect on his health and,  
12 again, I appreciate that.

13 MR. BECKER: If I may, Your Honor, Mr. Avaras' wife  
14 is here, I believe she has more knowledge about his medical  
15 prognosis than I do. So if I may invite her to speak and  
16 give an answer to the Court's questions.

17 THE COURT: Come on up, ma'am.

18 (Connie Avaras enters the well.)

19 CONNIE AVARAS: Thank you, Your Honor.

20 THE COURT: Can I ask you to raise your right hand.  
21 Do you solemnly swear the testimony you're about to  
22 give in this proceeding will be the truth, the whole truth,  
23 and nothing but the truth?

24 CONNIE AVARAS: I do.

25 THE COURT: Please put your hand down. Speak

1 loudly, tell me your name and spell it.

2 CONNIE AVARAS: Connie Avaras, C-O-N-N-I-E,  
3 A-V-A-R-A-S.

4 THE COURT: And what's your home address, ma'am.

5 CONNIE AVARAS: 93 South Mountain Road, New City,  
6 New York 10956.

7 THE COURT: And that's the address of the house in  
8 question?

9 CONNIE AVARAS: Yes, it is.

10 THE COURT: And you're the husband of James Avaras?

11 CONNIE AVARAS: I'm the wife.

12 THE COURT: You're the wife, excuse me, wife of  
13 James Avaras.

14 CONNIE AVARAS: And the husband at this point I  
15 guess you could say.

16 THE COURT: So what can you tell me, ma'am?

17 CONNIE AVARAS: So what we're trying and hoping to  
18 do is we just very recently been able to receive from the  
19 bank loss mitigation documentation that we were able to  
20 utilize after the COVID hardship. We just -- in fact, we're  
21 waiting for one more FedEx packet today which should be  
22 received by 8 p.m. according to the tracking number. So we  
23 are very hopeful with respect to your concern on the  
24 timeline as separate from Jim's prognosis. We're very  
25 hopeful with the help of Jim's family that we're going to be

1       able to save our home.

2               So, we have a very good plan in place to work  
3       through the negotiations of the loss mitigation now. And  
4       the bank has just sent the reinstatement letter and the  
5       documentation needed, November 18th we just got it, and  
6       unfortunately as Mr. Becker has mentioned, we didn't get --  
7       you know, this weekend created another emergency, Jim was  
8       discharged at three in the morning on Saturday night and  
9       without a catheter, after his emergency surgery this week at  
10      Westchester Medical, the fourth in four months, and without  
11      a Foley catheter in he wasn't able to void. It was a  
12      disastrous error from the hospital. But the point I'm  
13      making is we did have another emergency this weekend so we  
14      haven't even been able to fill out the loss mitigation  
15      papers.

16             THE COURT: Ma'am, right now the last thing I'm  
17      concerned about is a potential modification. I'm asking  
18      about your husband's prognosis based upon what his diagnosis  
19      is.

20             CONNIE AVARAS: We're very hopeful now after this  
21      last surgery, the brain surgery that happened a few weeks  
22      ago at Columbia, that Jim is finally going to be recovering  
23      and getting better. It is the best news we've had in a  
24      long, long while. His shunt was not working for ten years,  
25      they discovered that at Valley Hospital, did emergency

1 surgery at Columbia a few weeks ago, replaced his shunt.  
2 He's talking for the first time in months. He's taking  
3 steps for the first time in months. And now with the recent  
4 surgery on his prostate and his kidney infection and all  
5 that at Westchester Medical this past week, he's even now  
6 beginning to -- we removed the Foley catheter and he's going  
7 to start urinating. Everything is coming back.

8 THE COURT: So he's had a shunt for ten years so  
9 this is not a recent affliction? He's had issues for at  
10 least ten years?

11 CONNIE AVARAS: He's had issues since 1993 with the  
12 initial brain tumor and radiation in the nineties causing  
13 the TBI, that didn't stop him from working and being able to  
14 handle everything until 2017. He then had emergency brain  
15 surgery in 2019, the second brain surgery, and now he's had  
16 a third just now last month or a few weeks ago.

17 So, unfortunately with the shunt not functioning  
18 and us just learning that, he lost a great deal of his  
19 ability, which is really a tragedy that didn't have to  
20 happen, and he lost a lot of his speech and ability to walk  
21 and talk and do everything. At this point he is bedridden,  
22 but with the shunt repair, which is miraculous, he had a  
23 two-hour recovery at Columbia -- I mean a two-week recovery  
24 of nonresponsiveness, but he came out of it and is  
25 recovering now. So, we've been more hopeful right now than



1 we've literally been in years, and we do have a plan to move  
2 forward with how we can get back on track and recover the  
3 home.

4 MR. BECKER: So, do you have any sort of timeline  
5 with respect to how long until your husband is recovered  
6 sufficiently that he can engage in more normal activities  
7 and he's not bedridden or housebound?

8 CONNIE AVARAS: It's very difficult to say. I  
9 mean, we have home nursing and PT and OT now so we're  
10 working stridently now and every ability to bring him back  
11 cognitively, physically. You know, I wish I knew that  
12 answer. What I can say is this is the most hope we've had  
13 in a long time, but he's in a terrible state right now and  
14 I'm not God.

15 THE COURT: I'm sorry you're in that predicament, I  
16 really am.

17 Mr. Greene.

18 MR. GREENE: Your Honor, yes, it sounds like a  
19 terribly awful situation and we empathize, but  
20 unfortunately, this has been known to this Court, it's  
21 actually known to the Bankruptcy Court. When we brought the  
22 motion -- there was another firm that was involved, Frankel,  
23 Weiner firm before my firm was substituted in, they brought  
24 a motion for judgment of foreclosure and sale, Mr. Becker  
25 brought up this issue. In fact, one of the letters that he

1 attaches to the Order to Show Cause is the same one in  
2 December of '21 that explains his condition; the Court  
3 granted the motion. We then had to bring another motion to  
4 get an extension because the 90-day time period had expired  
5 under the judgment, that was also opposed and that issue was  
6 brought up again, and Your Honor did recognize it. And you  
7 said, you know -- you know, you recognized the Court has  
8 sympathy with the circumstances here, but unfortunately  
9 these aren't legal arguments, you know.

10 This foreclosure proceeding, the sale that should  
11 be held today, is not dispossessing Mr. Avaras. Obviously  
12 there's some steps that have to be taken after that. He  
13 has -- you know, he may want to raise this in another forum  
14 at another time, but this really affects his legal interest.  
15 This is an action that's been pending since 2017. You know,  
16 they had the Chapter 13 case. They had the chance to  
17 reorganize there. And in fact, Judge Morris, Southern  
18 District, dismissed the case as bad faith because of the way  
19 it was handled and the filings that were done, or the  
20 non-filings that were done.

21 I do understand that there was a request for, you  
22 know, the standard loss mitigation package which was done on  
23 November 16th, really quite late. Actually, our foreclosure  
24 sale was scheduled for November 14th, but our referee had  
25 contacted us like two days or three days before saying he

1 was going to be in London and couldn't make the sale so we  
2 adjourned it, we adjourned it for a week. And then, I  
3 guess, obviously Mr. Becker's firm was on notice of that,  
4 and, you know, they awoke again really with the same  
5 arguments they've had.

6 And, again, it's really a terrible circumstance,  
7 but, you know, quite frankly, everybody has terrible  
8 circumstances. I have things in my family that people  
9 undergo terrible circumstances with cancer and stuff like  
10 that, but these are legal obligations. He's had it for a  
11 long time and it's been in default and my client is entitled  
12 to try to mitigate its losses. They have a foreclosure sale  
13 set and it's not going to immediately dispossess Mr. Avaras.  
14 If there is some condition that he has that prevents that,  
15 he can take it up in a different forum.

16 I haven't spoken to Mr. Becker about it, but there  
17 are circumstances that my client does offer a cash for keys  
18 circumstance which we'll actually give them some money to  
19 help them move. But again, I don't think that's really the  
20 issue today. So, you know, with that, I would ask, you  
21 know, that the TRO request be denied.

22 THE COURT: What about that, Mr. Becker, even if  
23 the sale should proceed today, there is a variety of legal  
24 steps that would still need to take place if your client did  
25 not just voluntarily remove himself from the premises which

1 could take, as we know, months?

2 MR. BECKER: I understand that, Your Honor;  
3 however, whether the sale goes forward or not, as you  
4 mentioned, it could take months for my client to be  
5 dispossessed. So why at this point foreclose the option to  
6 continue to work with the bank to try to achieve a  
7 modification, which a loss of the property would do,  
8 especially if it went to a third-party purchaser which could  
9 happen? We don't know if anyone is planning to bid, if the  
10 bank is planning to bid or anything like that. So it could  
11 foreclose any ability to save this property during the time  
12 that Mr. Avaras is convalescing.

13 Additionally, I've been informed by Ms. Avaras that  
14 Mr. Avaras' mother is apparently willing to sell her house  
15 to try to facilitate saving this property.

16 Also, just to address a couple of additional  
17 points, they mentioned that it was a bad faith bankruptcy  
18 filing, and I understand that's what the bankruptcy papers  
19 stated, however -- and while I was not involved with the  
20 bankruptcy, I'm not admitted federally so I'm not -- I do  
21 not have personal knowledge of this, I've been informed that  
22 the bankruptcy was originally brought in Florida and then  
23 transferred to New York. And then when it was transferred  
24 to New York, apparently the firm that was handling it on the  
25 Avarases behalf did not appear at a conference or some

1 matter which resulted in the dismissal, but it was not  
2 through the Avarases -- they were allegedly, according to  
3 Ms. Avaras, they were not aware of it.

4 More over, in terms of -- I'd also like to point  
5 out that in terms of a stay and whatnot, my clients, if  
6 nothing else, are able to cover the taxes and insurance for  
7 the property so the bank's position would not necessarily  
8 need to be made any worse off, it's just a matter of time.  
9 They're not putting more money after this as it were.

10 THE COURT: Anything else, Mr. Greene?

11 MR. GREENE: I would -- again, the obvious,  
12 Mr. Becker's argument, I would just switch to the financial  
13 aspect of it. The financial aspect of this scenario is, you  
14 know, unfortunately they really don't have any defenses to  
15 that. They've had all this time. This is not new. My  
16 client is not a monster. This is not new. They're just  
17 trying to -- they have to answer to other people, other  
18 investors, and you know, this was actually a contested  
19 matter. They wanted discovery. They contested this for a  
20 long time. They went through the bankruptcy. You know,  
21 it's really a little bit disingenuous to put the health  
22 issue related to the financial issue because that's really  
23 not on the table. Just applying for a loss mitigation  
24 package does not amount to a hill of beans at this point.

25 So again, the argument that the Court is presented

1 here with is, you know, his physical condition, his medical  
2 condition, and that's not going to be disturbed by today's  
3 foreclosure sale, that's for sure. And whatever potential  
4 rights he may have with that, to preserve that, maybe  
5 prolong it until he can actually leave the premises, that's  
6 an issue for another day in another forum.

7 THE COURT: Well, I will note that the physical  
8 condition of Mr. Avaras has been known to the Court for  
9 quite some time. And I note that as far back as September  
10 21, 2021 the issue was raised before Court Attorney-Referee  
11 David Markus in connection with a hardship exemption and the  
12 Court did address Mr. Avaras' condition at that point in  
13 time. And, again, as most recently as this Court's order  
14 dated September 27th of 2022, the Court specifically stated,  
15 quote, this Court empathizes with defendant's medical  
16 condition and commends counsel to implement this order with  
17 decency. I'm going to try to make this determination with  
18 decency, as well.

19 As indicated, I certainly, again, empathize with  
20 what's happening in your household, ma'am, but I think at  
21 this point in time --

22 CONNIE AVARAS: May I?

23 THE COURT: -- we're not --

24 CONNIE AVARAS: May I respond?

25 THE COURT: -- having you and your family vacate

1 the premises today or tomorrow.

2 CONNIE AVARAS: That's not the point, Your Honor.

3 THE COURT: I'm sorry, ma'am?

4 CONNIE AVARAS: May I respond to one thing? That's  
5 not the point about vacating, although it's critical at this  
6 juncture, the point is that it will save Jim's life to keep  
7 his home. I wrote something for you that I was not able to  
8 be --

9 THE COURT: That's not even out of the question  
10 regardless of what happens today, ma'am.

11 CONNIE AVARAS: And the COVID hardship was what he  
12 refers to in 2021.

13 THE COURT: I understand. Absolutely. That's what  
14 I was referring to, as well.

15 CONNIE AVARAS: That is a different story because  
16 in May when that bankruptcy happened Jim was undergoing  
17 radiation and chemotherapy on a daily basis. We certainly  
18 would have showed up had we known about it. We're not  
19 interested in going to bankruptcy. We know that we can work  
20 it out with the lender, we are 100 percent confident. So we  
21 can start doing that immediately.

22 So we're not even asking for a long stay here.  
23 We're asking to not go through the Bankruptcy Court. We're  
24 asking to work directly with the lender which we now have  
25 the ability to do. And this is all new since September

1 27th, since that most recent discussion when, again, Jim was  
2 in these emergency surgeries in the last four months. I had  
3 no knowledge of the foreclosure even coming through with  
4 those documentations and paperwork because we were immersed  
5 in saving his life. We have done so and now we are ready  
6 with the help of family and friends, we are able to save our  
7 home and we want to do so directly with the lender through  
8 reinstatement modification, whatever the means may be. We  
9 are ready to do so. And losing it --

10 THE COURT: And I appreciate that, ma'am, but  
11 again, I've got to look at this from all sides here. I'm  
12 looking at the Summons which initiated this action four  
13 years and 11 months ago almost to the day, and I know that  
14 you've been represented by counsel throughout this process,  
15 Mr. Greene indicated that it has been contested for quite  
16 some time now, and I know --

17 CONNIE AVARAS: We did loss mitigation.

18 THE COURT: I know Mr. Becker from dealing with him  
19 on many cases, and he has done everything within his power  
20 to fight for the rights of your husband, and he's here today  
21 in one more effort to get this done. I'm not happy that I'm  
22 making this decision, ma'am, trust me, I don't feel good  
23 about this. I feel anything but good about making this  
24 decision.

25 CONNIE AVARAS: It's not a stall effort. This is



1 not a stall effort.

2 THE COURT: I didn't say it was. I know you're  
3 doing what you feel is best for your family, ma'am.

4 CONNIE AVARAS: Even a few weeks, a month, so we  
5 could work with them and show them that we have the ability  
6 to pay.

7 THE COURT: I understand, ma'am, and that is always  
8 subject to agreement. And if the bank chooses to, you know,  
9 cancel the sale, they can do so.

10 CONNIE AVARAS: We have a tax issue here beyond  
11 that, sir. And the other issue is that in 2018, we tried to  
12 work with the bank with a full modification and the ability  
13 to pay. So when he referenced 2017 as if nothing has been  
14 done, we have worked diligently every step of the way and  
15 all of our actions have been denied flatly. We tried to  
16 short sale to someone that was willing to rent it back to us  
17 for the short-term. We tried every possible avenue with the  
18 bank and they have not been willing to do so.

19 So, reinstatement would be what would work at this  
20 point since they don't want to seem to do anything else.  
21 But we're asking for that period of time, a very short  
22 window of time to get this done with the bank, and at that  
23 point if you could see that they are not willing to work  
24 with it, then we have other choices to make, but we know we  
25 can do it, Your Honor. We just need the bank to hear us

1 now, finally.

2 We received the papers. We've been asking all  
3 month for these documents. So it's not true that we just  
4 requested them on November 16th. I've been calling the bank  
5 like crazy, as I have from November 2017, 2018. There was  
6 even a phone call where they thought we hung up the line and  
7 they said, while my husband and I stood there, hat in hands,  
8 saying we're ready to move forward with this modification  
9 with all the means to do so in 2018, and they said we're  
10 going to make a lot of money on this one. They thought we  
11 hung up the phone, they were still on, and they were  
12 laughing. And they are making a lot of money on this one  
13 and it's not right or fair.

14 MR. GREENE: I don't have a witness here to counter  
15 that. I'm not going to cross-examine Ms. Avaras.

16 THE COURT: As I said, you know --

17 CONNIE AVARAS: It's money, sir.

18 THE COURT: -- this is one of the more difficult  
19 decisions that I've had to make, but Mr. Becker, I'm going  
20 to decline to sign your Order to Show Cause at this time.

21 MR. BECKER: Understood.

22 THE COURT: Good luck. Good luck, ma'am.

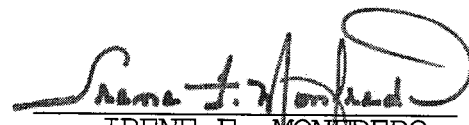
23 MR. GREENE: Thank you.

24 (Certification on next page.)  
25

\* \* \* \* \*

C E R T I F I C A T I O N

The foregoing is hereby certified to be a true and accurate transcript of the proceedings as transcribed from the stenographic notes.

  
IRENE F. MONFREDO  
Senior Court Reporter